IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 1583 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

GAUTAM CHANDRAKANT GANDHI

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Misc.Application No. 1583 of 2001

MR PARDIWALA WITH MR. KB ANANDJIWALA for the Petitioner.

MR PANCHOLI, APP, for Respondent No. 1

MR SV RAJU WITH MR AMAR DAVE for Respondent No. 2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 13/12/2001

ORAL JUDGEMENT

1. This petition is preferred seeking quashment of a First Information Report lodged with Navrangpura Police

Station vide C.R.-I No.910 of 1999, alleging commission of offences punishable under Sections 406, 420, 467, 468 and 120-B of Indian Penal Code.

2. The F.I.R. is preferred by present respondent No.2 making the following allegations :-

2.1 One Mahendra Shantilal Shah (now deceased) approached father of the complainant through a common friend, Gautambhai Patel, along with Natwarlal Chimanlal Shah, Ghanshyambhai Patel and Arvind Manilal Patel. The complainant intimated Gautambhai Patel that he proposes to start building construction business and is interested in a good piece of land. Thus, Mahendrabhai, Natwarbhai and Ghanshyambhai were introduced to the complainant. The negotiations for the land took place on the 29th March, 1995 at the residence of the complainant in presence of his father and wife when Mahendrabhai informed that Ambica Mills Limited has about 9215 sq. metres of land in the outskirts of Mithipur, bearing Survey Nos.29, 30, 31 and 32 of Town Planning Scheme No.7, Plot No.2, near Anupam Cinema, on the Khokhara Road; and that Managing Director of Ambica Mills is Rajesh Jaykrishna and the Chairman is Jaykrishna Harivallabhdas. Mahendrabhai also informed that, he along with Natwarlal Chimanlal is the power of attorney holder in respect of the land. The said land was sold to Rutuja Estates and Investments Private Limited by Rajesh Jaykrishna in 1993 and that he (Mahendrabhai), Natwarlal, Ghanshyambhai K. Patel and Arvind Manilal are the directors of the said Rutuja company. The complainant, therefore, expressed his desire to see the piece of land. They, therefore, visited the site in the afternoon and the complainant having liked the land, asked for the list of documents and documents of sale deed in favour of Rutuja. He was, therefore, shown documents like agreement to sell, supplemental agreement, declaration, possession letter and form No.39(i) relating to Income Tax Clearance and was informed that the lands are owned by the mill owners and, therefore, there is nothing to be worried. The complainant, therefore, was convinced to purchase the land and the price was fixed at Rs.66 lakhs and the deal was struck.

2.2 According to the complainant, he expressed his desire to make the payment by cheque and document was supposed to be executed in his favour and also in favour of his wife. At that time, he was informed by Mahendrabhai that, if a sale deed is executed, it may create problems qua the Urban Land Ceiling Act and would require payment of stamp duty in lakhs. He, therefore,

suggested that the complainant may purchase the shares of Rutuja Company and thereby become owner of the said company and, consequently become owner of the said land in question. The land has clear titles. None else except Rutuja Company has any interest or incumbrance over the said property. The directors would transfer all the shares of Rutuja Company to the name of the complainant and his wife for Rs.66 lakhs. To this proposition, the complainant agreed and, initially, made a payment of Rs.11 lakhs by cheque and title clearance certificate was asked for by him from the vendors.

2.3 It is further alleged in the F.I.R. that Mehandrabhai Shantilal, Natwarbhai Chimanlal, Ghanshyambhai K. Patel and Arvind Manilal Patel obtained a cheque of Rs.55 lakhs in favaour of Rutuja Investments Private Limited on the 4th July, 1995 and transferred the shares of the said company to the complainant and that is how he became a director of Rutuja Company along with his wife.

2.4 The complainant has further alleged in the F.I.R. that, after getting the land, after obtaining necessary permission, he had constructed about 40 sheds when on May 14, 1997, the Official Liquidator appointed the High Court came to the site and sealed the land. This was done by him pursuant to an order passed by the High Court of Gujarat in a winding up petition against the original land owners, Ambica Mills Limited.

2.5 In the F.I.R., a reference is made to Company Petitions No.189 of 1997 and 559 of 1997, wherein it was held that in light of an undertaking given to the Apex Court in a diferent litigation, on behalf of Ambica Mills Limited, there is an undertaking not to transfer or alienate or charge the property without permission of the Apex Court. Ambica Mills had committed a breach thereof by executing an agreement to sell in 1988 and then, subsequently, executing a supplemental agreement along with declaration and power of attorney in favour of Mahendrabhai and Natwarbhai, and then, executing another sale deed in 1993 in favour of the petitioner.

2.6 It is alleged in the F.I.R. further that the sale deed of 1993 was executed by the accused in dual capacity - (1) that of power of attorney holder and (2) that of director of Rutuja, i.e. same person executing a document in his own favour in a different capacity.

2.7 It is, therefore, alleged that the complainant was induced to believe that the property bears a clear

title and was induced to purchase the property in spite of the fact that the accused were aware about the fact that an undertaking was given to the Supreme Court by Ambica Mills and in breach thereof, the property was sold to Rutuja and Rutuja in turn was selling the property to the complainant. The title was, therefore, not clear. The accused along with several other persons like Rajesh Jaykrishna, Jaykrishna Harivallabhdas and Prahladbhai Fulabhai Brahmbhatt, have committed the offences alleged to have been charged in the F.I.R.

3. Following the F.I.R., offence was registered and investigation started. The investigating agency, after investigating into the matter, filed charge sheet against the petitioner along with Natwarlal Chimanlal Shah, Arvind Manilal Patel, Ghanshyambhai Kantilal Patel, Rajesh Jaykrishna Patel, Harishkumar Dayashankar Dave, Prahladbhai Fulabhai Brahmbhatt and Mahendra Shantilal Shah. The said charge sheet was filed in the month of August 2000. In the said charge sheet, it is indicated that Mahendra Shantilal Shah could not be arrested and brought to the Court as he had expired on March 18, 1999, whereas Prahladbhai Fulabhai Brahmbhatt had gone to America and whereabouts are not known.

3.1 The petitioner is the Solicitor/Advocate who issued title clearance certificate in favour of Rutuja.

4. Learned advocate Mr. Pardiwala appearing for the petitioner submitted that the petitioner is a professional who has issued a title clearance certificate in favour of Rutuja. As a professional, he had taken search of the records of right which do not indicate any charge or encumbrance on the property. He cannot be expected to be aware about any undertaking given by the previous owner, namely, Ambica Mills to the Apex Court in a litigation and, therefore, he cannot be considered to be a party to the alleged conspiracy. He had undertaken a professional work. There is no allegation in the F.I.R. against the petitioner. It is only during the course of investigation that the investigating agency has arraigned him as one of the accused persons. Mr. Pardiwala submitted that in absence of any material to indicate any nexus between the petitioenr and Rutuja and/or Ambica regarding commission of the crime, no crime can be attributed to the petitioner and, in fact, record does not indicate anything against the petitioner. Therefore, criminal proceedings arising out of the said F.I.R. and the charge sheet may be quashed.

5. Mr. Raju, learned advocate appearing for

respondent No.2 submitted that whether there was conspiracy or not and whether the petitioner was a party to the conspiracy or not would be a matter of evidence. He submitted that conspiracy and being party to such conspiracy is a mental state which can be inferred only by evidence, circumstances and conduct of the party. At this stage, this Court may not exercise the inherent powers in favour of the petitioner.

5.1 Mr. Raju submitted further that the petitioner may apply for a discharge instead of quashing.

6. Learned Additional Public Prosecutor, Mr. Pancholi, adopted the arguments advanced by Mr. Raju and submitted that the petition may be dismissed. He submitted that appreciation of evidence and entering into the question of examining the genuineness or otherwise of the allegations made in the F.I.R. cannot be gone into by this Court while exercising powers under Section 482 of the Code of Criminal Procedure.

7. Having regard to the contentions raised before this Court, there is no dispute about the settled proposition of law that while considering the question of quashment in exercise of powers under Section 482 of the Code of Criminal Procedure, this Court is not supposed to enter into the arena of examining the evidence and deciding the question as to genuineness or otherwise of the allegations made in the F.I.R. or the complaint. The Court has to examine the F.I.R. or the complaint and accepte them at their face value without any addition or substraction and, if an offence is made out, the Court may not exercise powers under Section 482 of the Code of Criminal Procedure for quashing the F.I.R. or the complaint, as the case may be. But if no ingredients constituting the offences alleged are indicated, the Court may as well exercise the powers.

8. On examination of the papers of the charge sheet including the F.I.R., even on a plain reading of the charge sheet papers, there is nothing in the charge sheet papers to indicate that the petitioner was a party to the alleged conspiracy. The only act attributed to the petitioner is that he had issued Title Clearance Certificate. It would be relevant to note that it is only at the time of filing of charge sheet that he is arraigned as accused. There is nothing to indicate that he was a party to the transaction by other accused. No case, therefore, can be said to have been made out qua the petitioner in respect of the offences alleged. The petition, therefore, deserves to be allowed and the same

is allowed. The proceedings flowing from the F.I.R. and the charge sheet in question stand quashed qua the petitioner only. Rule is made absolute.

9. It is clarified that observations made herein relate only to the case of the petitioner and no observations are made in respect of any other accused persons.

[A.L. DAVE, J.]

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